

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

KEVIN KENNEY,

Petitioner,

vs.

No. CV 18-01163 JCH/KRS

ATTORNEY GENERAL OF THE  
STATE OF NEW MEXICO,  
Respondent.

**ORDER QUASHING ORDER TO SHOW CAUSE,  
GRANTING LEAVE TO PROCEED UNDER 28 U.S.C. § 1915,  
AND DIRECTING RESPONDENT TO ANSWER**

**THIS MATTER** is before the Court *sua sponte*. On December 18, 2018, the Court entered an Order to Show Cause, noting that it appeared from the record that Petitioner was no longer in custody and directing Petitioner to show cause why the case should not be dismissed for lack of jurisdiction. (Doc. 3). Petitioner filed a Response to the Order to Show Cause, advising the Court that, although he has been released from incarceration, he is still serving two years of parole. (Doc. 4). Petitioner's Response demonstrates that he was in custody at the time he filed his Petition and the jurisdictional requirement of 28 U.S.C. § 2254 is met. *Mays v. Dinwiddie*, 580 F.3d 1136, 1139 (10th Cir.2009); *Kirby v. Janecka*, 379 F. App'x 781, 782–83 (10th Cir. 2010). Therefore, the Court will quash the December 18, 2018 Order to Show Cause.

Also before the Court is Petitioner's Application to Proceed in the District Court Without Prepayment of Fees or Costs. (Doc. 2). The Application filed by Petitioner Kenney meets the requirements of 28 U.S.C. § 1915(a), the Court will grant the Application, and Petitioner may proceed without prepayment of costs or other fees or the necessity of giving security therefor.

Last, the Court has conducted the preliminary review required by Rule 4 of the Rules Governing Section 2254 Proceedings and has determined that the petition is not subject to summary dismissal, *see* 28 U.S.C. § 2254 R.1(b), 4. Therefore, the Court will order the Respondent to file an answer to the Petition (Doc. 1) within thirty (30) days from the date of entry of this Order. Respondent's answer shall advise, but is not limited to, whether the Petitioner has exhausted his state court remedies as to the issues raised in the federal petition. Respondent shall attach to its answer copies of any pleading pertinent to the issue of exhaustion which was filed by Petitioner in the sentencing court, the state district court, the state court of appeals, and the state supreme court, together with copies of all memoranda filed by both parties in support of or in response to those pleadings. Respondent shall also attach to the answer copies of all state court findings and conclusions, docketing statements and opinions issued in Petitioner's state court post-conviction or appellate proceedings. The answer must describe the procedural history of each claim that Respondent contends is unexhausted and identify the State procedures that are currently available to Petitioner.

**IT IS ORDERED:**

- (1) the Order to Show Cause entered by the Court on December 18, 2018 (Doc. 3) is **QUASHED**;
- (2) the Application to Proceed in District Court Without Prepayment of Fees or Costs filed by Petitioner, Kevin Kenney (Doc. 2) is **GRANTED**, and Petitioner may proceed without prepayment of costs or other fees or the necessity of giving security therefor; and
- (3) the Clerk is **DIRECTED** to forward copies of this Order and the Petition Under 28 U.S.C. § 2254 for a Writ of Habeas Corpus (Doc. 1) to Respondent the New Mexico Attorney General; and
- (4) that Respondent **ANSWER** the Petition within thirty (30) days from the date of entry of this Order.

  
UNITED STATES MAGISTRATE JUDGE